

Chapter 30.35A TRANSFER OF DEVELOPMENT RIGHTS

30.35A.010 Transfer of development rights (TDR) purpose and applicability.

(1) Purpose. The purpose of this chapter is to establish a voluntary and incentive-based process, based on free market principles, to conserve natural resource and open space lands for the use and enjoyment of future generations by allowing the transfer of development rights from lands with significant conservation values to lands considered more appropriate for development.

Subject to the requirements of this chapter, the transfer of development rights from sites located within TDR sending areas to sites located within TDR receiving areas is allowed in order to: (a) permanently preserve natural resource and open space lands with countywide public benefit; (b) provide flexibility and better use of land and building techniques; (c) help preserve commercial farmlands designated as TDR sending areas by reducing residential development within such areas; (d) implement the goals, policies, and objectives of the countywide planning policies, the comprehensive plan, and the provisions of this chapter. (2) Applicability. The requirements of this chapter do not apply to the processing or issuance of building permits or other development approvals. This chapter supplements county land use regulations and resource land protection efforts by establishing requirements for: (a) determining the number of certified development rights that a sending site is eligible to transfer based on the overall developable area of the site multiplied by a transfer ratio, which is intended to provide an incentive for use of the TDR program; (b) issuing TDR certificates reflecting the number certified development rights that a sending site is eligible to transfer; (c) conveying TDR certificates and recording conservation easements that restrict development on

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sending sites; (d) qualifying TDR sending sites and TDR receiving sites, in accordance with the comprehensive plan; (e) applying certified development rights to TDR receiving sites and the extent of increased development allowed on receiving sites; (f) purchasing, holding and selling certified development rights by the county; and (g) interlocal agreements providing for the use of TDR certificates within incorporated TDR receiving areas.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005; Amended Ord. 06-055, July 19, 2006, August 5, 2006)

30.35A.020 Transfer of development rights (TDR) overview.

(1) Issuance and conveyance of TDR certificates. Subject to the requirements of this chapter, sending site owners may obtain from the department serially numbered TDR certificates reflecting the number of certified development rights that may be transferred from the sending site owner to a purchaser, and which may thereafter be freely transferred from purchaser to purchaser until ultimately applied to a receiving site located within a receiving area. The number of certified development rights credited to a sending site is determined based on the overall developable area of the sending site. TDR certificates may be applied to receiving sites pursuant to the requirements of this chapter or applicable city regulations.. (2) Grant of TDR conservation easement. TDR certificates may be issued in exchange for a conservation easement granted to the county pursuant to the requirements of this chapter. The TDR conservation easement is used to conserve, for agricultural use, the sending site for which TDR certificates are certified. (3) Application of certified development rights to receiving areas. Subject to the requirements of this chapter or applicable city regulations, certified development rights, as reflected by properly issued TDR certificates, may be used to obtain development incentives within designated TDR receiving areas. (4) County purchase, holding and sale of certified development rights. Subject to

the requirements of this chapter, the county may purchase certified development rights from the TDR Pilot Program sending area and hold those rights for subsequent resale.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005; Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006)

30.35A.030 Transfer of development rights - sending sites.

In order for development rights to be certified for a sending site pursuant to SCC 30.35A.050 or transferred from a sending site pursuant to SCC 30.35A.080, all of the following requirements must be met: (1) Location within a sending area required. The sending site must be located within a sending area designated on the future land use map and reflected on the official zoning map. However, the sending site need not include all land owned by the applicant within the sending area provided that all requirements of this section are met. (2) Sending site must follow established lot lines. The boundaries of a sending site must follow established lot lines and cannot include less than the entire portion of a lot, as defined in Title 30 SCC. (3) Inclusion of substandard lots required. A sending site must include any lots that have substandard area under current zoning where such lots are adjacent to and contiguous with land included within the sending site and are owned by the sending site landowner. (4) Private ownership required. The sending site must be owned by a private individual or entity, and may not be owned by municipal corporations, special purpose districts, or government bodies.

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(5) Code compliance required. If the sending site is the subject of code enforcement action by the county, the person responsible upon whom a notice for a violation has been served pursuant to chapter 30.85 SCC must resolve these violations, including any required abatement, restoration, or payment of civil penalties, before development rights for the sending site may be certified or transferred by a sending site landowner. This requirement may be waived at the discretion of the director where a proposal is in the public interest, provided that any outstanding code violations do not materially affect the agricultural production capability of the sending site and the person responsible for code compliance is making a good faith effort to resolve the violations. Waivers granted pursuant to this subsection are solely for the purpose of TDR sending site eligibility and do not constitute a waiver of any county land use regulations or affect ongoing or future code enforcement actions related to the sending site. (6) Forest practices compliance required. For lots on which the entire lot or a portion of the lot has been cleared or graded pursuant to a Class II, III or IV special forest practices permit as defined by RCW 76.09.050 within the six years prior to application for certification or transfer of development rights, the applicant must provide an affidavit of compliance with the reforestation requirements of RCW 76.09.070, WAC 222-34-010 and any additional reforestation conditions of their forest practice permit. Lots that are subject to a six-year moratorium on development applications pursuant to RCW 76.09.060 shall not be qualified as TDR sending sites until such moratoria have expired or been lifted.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005; Amended by Amended Ord. 08-062, Oct. 1, 2008, Eff date Nov. 1, 2008)

30.35A.040 Transfer of development rights (TDR) — sending site calculations.

(1) Calculation for transfer purposes only. The determination of the number of certified development rights that a sending site is eligible to transfer pursuant to this section, including the determination of TDR net area pursuant to subsection 3 of this section and the application of a TDR transfer density pursuant to subsection 4 of this section, shall be valid for transfer purposes only and shall not entitle the sending site landowner to building permits or other development approvals. (2) Number of certified development rights. The number of certified development rights that an unincorporated sending site is eligible to transfer shall be determined by

multiplying the TDR net area for the sending site, as determined pursuant to subsection 3 of this section, by the TDR transfer density ratio established for the sending site zone in subsection 4 of this section. Any fractions that result from the calculation required by this subsection shall not be included in the final determination of total development rights available for transfer. (3) TDR net area. For purposes of determining the number of certified development rights that a sending site can transfer pursuant to subsection 1 of this section, the sending site net area shall equal the area of the sending site minus the following: (a) The number of existing and proposed residential dwelling units or other residential, commercial, or industrial structures, if any, on the sending site multiplied by the minimum lot area, as determined pursuant to the bulk matrix at SCC Tables 30.23.030(1) and 30.23.030(2), for the applicable zone in which the sending site is located. (b) Any portion of the sending site that is already subject to a conservation easement or other recorded encumbrance restricting development on the sending site. (c) Any portion of the sending site that is delineated floodway on the flood insurance rate maps. (4) TDR transfer density. For purposes of determining the number of certified development rights that a sending site is eligible to transfer pursuant to this section, the following transfer densities shall apply: (a) A transfer density of 0.4 shall apply to sending sites located within the A-10 zone, computed as the base density of .1 dwelling unit per acre for the underlying zone multiplied by a transfer ratio of four. (5) Legal lots. In lieu of the calculation provided under subsection 2 of this section, the sending site shall, at

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the request of the applicant, be credited one certified development right, multiplied by the transfer density provided under subsection 4 of this section, for every legal lot with an area of 12,500 square feet or more that existed on or before March 15, 2005, as recognized through the department administrative lot status process. (6) TDR calculation final. Except as otherwise provided by SCC 30.35A.050(1)(b), the determination of the number of certified development rights that a sending site is eligible to transfer to a receiving site pursuant to subsection 1 of this section shall not be revised due to subsequent rezones or other changes to the sending site.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005; Amended by Amended Ord. 08-101, Jan. 21, 2009, Eff date April 21, 2009)

30.35A.050 Transfer of development rights (TDR) certification of development rights and issuance of TDR certificates.

(1) TDR certification process. Subject to the requirements of this section, sending site landowners may obtain TDR certificates which can be transferred pursuant to SCC 30.35A.070 and used by receiving area landowners to obtain density bonuses pursuant to SCC 30.35A.080 through SCC 30.35A.120. The required process for obtaining TDR certificates is as follows: (a) Following application for TDR certificates by the sending site owner pursuant to subsection 2 of this section, the department shall issue a TDR certificate letter of intent. The letter shall contain a determination of the number of development rights calculated for the sending site pursuant to SCC 30.35A.040 and an agreement by the department to issue a corresponding number of TDR certificates in exchange for a sending site conservation easement granted to the county by the sending site owner pursuant to SCC 30.35A.060. The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall have no value and cannot be transferred or used to obtain increased development rights within receiving areas. (b) As provided by the TDR certificate letter of intent, the department shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a conservation easement pursuant to the requirements of SCC 30.35A.060; provided, however, that the department shall have 14 days from the date the

conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site permit file and/or a site inspection. If, based on such a review, the department determines that conditions on the sending site are materially different than those documented in the information provided to the department pursuant to subsection 2 of this section, the department shall reject the conservation easement and the TDR certificate letter of intent shall be null and void. Where a TDR certificate has been determined to be null and void pursuant to this subsection, a sending site owner may reapply for TDR certificates and such reapplications shall be subject to the requirements of this section. (2) Application for TDR certificates. In order to obtain TDR certificates pursuant to subsection 1 of this section, the sending site owner(s) must submit an application for TDR certificates. The department shall use the application to determine whether the sending site meets the requirements of SCC 30.35A.030 and, if so, the number of certified development rights that the sending site is eligible to transfer pursuant to SCC 30.35A.040. The application shall include all of the following: (a) Legal description and parcel numbers of the sending site for which TDR certificates are sought. (b) The following documents, which shall be used as the basis for determining net area pursuant to SCC 30.35A.040(3): (i) If the sending site consists of one or more undivided tax parcels, the applicant(s) shall provide either official records from the Snohomish County Assessor or a survey that has been prepared and stamped by a surveyor licensed in the state of Washington. (ii) If the sending site consists of lots within one or more tax parcels, the applicant(s) shall provide a survey that has been prepared and stamped by a surveyor licensed in the state of Washington. (iii) If the sending site consists of one or more tax parcels that are divided by a zoning boundary, the

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applicant(s) shall provide official copies of the quasi-judicial decision, administrative approval, or legislative enactment establishing the zoning boundary for each parcel. (iv) If one or more single family dwellings or other residential, commercial, or industrial structures exist on the sending site, the applicant(s) shall submit a site map showing the location of each dwelling. (v) If the applicant(s) propose to build one or more single family dwellings, or other structures permitted by the sending site zoning, following the issuance of TDR certificates for the sending site, the applicant(s) shall submit a general site plan showing the number of dwellings and their location, as well as any proposed subdivision. (c) A title report issued no longer than 30 days prior to the date of application confirming that the ownership interest(s) in the sending site are in the name(s) of the person(s) whose signature(s) appear on the application for TDR certificates. (d) A declaration by the applicant(s) stating that the sending site for which TDR certificates are sought contains only undivided legal lots, as required by SCC 30.35A.030(2). (e) A declaration by the applicant(s), pursuant to SCC 30.35A.030(3), stating that the sending site is not adjacent to any lot that has substandard area under current zoning and is held in common ownership with the sending site. (f) A declaration by the applicant(s) describing the status of ongoing code enforcement actions, if any, relating to the sending site and the steps taken by the applicant to resolve the violations. (g) A declaration by the applicant(s) stating all liens, if any, that are recorded against the sending site. (h) A review fee pursuant to SCC 30.86.135. (3) Supplemental information. When the information required by subsection 2 of this section is inadequate or unavailable, the department may require additional documentation from the applicant or rely on information contained in the county geographic information system or other county records. (Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005)

30.35A.060 Transfer of development rights (TDR) conservation easement.

(1) TDR conservation easement required. No TDR certificates shall be issued pursuant to SCC 30.35A.050 unless a conservation easement is accepted by the director pursuant to the requirements of this section. (2) Acceptance and recording of TDR conservation easement. Subject to the restrictions of SCC 30.35A.050(1)(b), the director shall accept and sign on behalf of the county a conservation easement offered by a sending site owner in exchange for TDR certificates following issuance of a TDR certificate letter of intent; provided, however, that the easement meets the requirements set forth in subsection 3 of this section. Following acceptance of a conservation easement by the director, the department shall record the easement with the county auditor. (3) Requirements for TDR conservation easement. The conservation easement shall be on a form approved by the prosecuting attorney and shall be reviewed and approved by the department, subject to the requirements of this section. The easement shall contain, at a minimum, all of the following: (a) The serial numbers of the TDR certificates to be issued by the department on the sending site that is the subject of the conservation easement. (b) A legal description of the sending site. (c) A covenant prohibiting any subdivision of the sending site except for subdivisions, if any, that were proposed in the documentation submitted to the department pursuant to SCC 30.35A.050(2)(v). (d) A covenant prohibiting the construction of all single family or other residential, commercial, or industrial structures except for those dwellings, if any, that were proposed in the documentation submitted to the department pursuant to SCC 30.35A.050(2)(v). The covenant shall allow accessory and temporary dwelling units that are subservient to existing or proposed single family or other residential dwellings.

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(e) A covenant prohibiting all uses that impair or diminish the agricultural use of the land. (f) A covenant that all provisions of the conservation easement shall run with the land and bind the sending site in perpetuity, and may be enforced by the county. (g) A statement that nothing in the restrictions shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his or her heirs, successors and assigns shall retain exclusive rights to such access or use subject to the terms of the conservation easement. (h) Where certified development rights are being purchased by the county, any provisions that are required by applicable federal or state grants. (i) Additional provisions that are reasonably necessary for the enforcement and administration of the conservation easement as determined by the director, including a covenant granting the county a right of entry, subject to reasonable advance notice, to conduct brief inspections for the sole purpose of determining compliance with the requirements of the easement.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005)

30.35A.070 Transfer of development rights (TDR) conveyance of certified development rights.

(1) Conveyance of certified development rights authorized. Subject to the requirements of this section, TDR certificates issued pursuant to SCC 30.35A.050 may be sold or otherwise conveyed and held indefinitely before certified development rights are applied to a receiving site pursuant to SCC 30.35A.080 through SCC 30.35A.120. (2) Deed of transferable development rights required. TDR certificates issued pursuant to SCC 30.35A.050 shall be sold or otherwise conveyed only by means of a deed of transferable development rights meeting the requirements of this section. (3) Recording of deed and notice of transfer. At the time a TDR certificate is conveyed, the parties shall record the deed of transferable development rights documenting the conveyance. The department shall review and approve the deed of transferable development rights, subject to the requirements of this section, prior to its recording. Costs associated with the recordation shall be paid by the seller. (4) Contents of deed. The deed of transferable

development rights required by subsection 3 of this section shall specify the number of certified development rights sold or otherwise conveyed and shall be on a form provided by the department and approved the prosecuting attorney. The deed of transferable development rights must include: (a) A legal description and map of the sending site. (b) The names of the transferor and the transferee. (c) A covenant that the transferor grants and assigns to the transferee a specified number of certified development rights from the sending site. (d) Proof of ownership of the sending site by the transferor or, if the transferor is not the owner of the sending site, a declaration that the transferor has either: (i) sold the sending site but retained the TDR certificates issued for the sending site pursuant to SCC 30.35.050; or (ii) obtained TDR certificates previously conveyed by an original deed of transferable development rights, which shall be identified by date of execution, the names of the original transferor and transferee, and the volume and page where it was recorded with the auditor. (e) A covenant by which the transferor acknowledges no further use or right of use with respect to the certified development rights being conveyed. (f) Certification of the number of certified development rights on the sending site and copies of the TDR certificates issued by the department for the sending site pursuant to SCC 30.35A.050.

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(g) Proof of payment to the state of any required excise taxes and payment to the county of recording fees for the transaction. (h) Proof of the execution and recordation of a conservation easement on the sending site, as required by SCC 30.35A.060. (i) The signature of the department staff member(s) who have reviewed the deed for completeness.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005)

30.35A.080 Reserved.

30.35A.090 Reserved.

30.35A.100 Reserved.

30.35A.110 Reserved.

30.35A.115 Transfer of development rights (TDR) - application of TDR certificates to receiving sites and extinguishment of TDR certificates.

(1) Application to a TDR receiving site. TDR certificates shall be considered applied to a receiving site when a final decision has been made approving the receiving site development activity for which the TDR certificates are provided. (2) Effect of applying TDR certificates to a receiving site. TDR certificates that have been applied to a receiving site pursuant to subsection 1 of this section shall be considered void by the county and may not be applied to receiving sites pursuant to this chapter; provided, however, that if a decision approving a receiving site development activity is appealed, the TDR certificates provided in connection with that approval shall not be considered void under this section unless the decision approving the development activity is affirmed following the exhaustion of all administrative and judicial appeals. (3) TDR extinguishment document required. Upon application to a receiving site pursuant to subsection 1 of this section, the applicant receiving approval of a receiving site development activity shall provide a TDR extinguishment document to the department. The TDR extinguishment document shall be on a form provided by the department and shall include the serial number of each TDR certificate that has been applied to a receiving site and the legal description of the receiving site to which the certificate(s) have been applied.

(Added Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006)

30.35A.120 Reserved.

30.35A.125 Transfer of development rights (TDR) - interlocal agreements for incorporated TDR receiving areas.

(1) Authorization. Subject to final approval by the county council, the county executive is authorized to negotiate and execute interlocal agreements with cities providing for the use of TDR certificates issued pursuant to this chapter in connection with development approvals within incorporated TDR receiving areas designated or zoned by a city. Execution of such agreements by the county shall be subject to the applicable requirements of this chapter and the comprehensive plan.

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(2) Substantive requirements. Interlocal agreements executed by the county pursuant to subsection 1 of this section shall provide for the use of TDR certificates issued by the county pursuant to SCC 30.35A.050 in connection with development applications within TDR receiving areas following annexation. Such agreements shall also contain additional provisions necessary to implement the comprehensive plan, including a process by which the city shall provide TDR certificates and an associated TDR extinguishment document to the county following transfer of the TDR certificates to an incorporated receiving site consistent with the requirements of SCC 30.35A.115.

(Added Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006)

30.35A.130 Transfer of development rights (TDR) purchase, holding, and sale of certified development rights.

(1) Authorization. The county may from time to time buy, hold, and sell certified development rights in accordance with the requirements of this chapter. (2) Purchase of certified development rights. The county may, at its discretion, publish requests for proposals to purchase certified development rights from landowners of sending sites located within the TDR pilot program sending area. Requests for proposals shall be published in a newspaper of general circulation at least thirty days prior to the last date upon which proposals shall be accepted. The request shall state the requirements for submitting proposals, including the deadline for submission, the name and address of the county contact person, the proposed sale price, and any additional information required to be included in the proposal. Proposals received by the county in response to such requests shall be reviewed by the TDR advisory committee pursuant to SCC 30.35A.140, and the department shall present the committees recommendations concerning the proposals to the county council. Subject to authorization by the county council, the purchase of certified development rights shall be conducted by the county executive consistent with the requirements of this chapter. (3) Holding certified development rights. Certified development rights acquired by the county shall be deposited into and held in a TDR fund, established by ordinance. (4) Sale of certified development rights. The sale of certified development rights shall be conducted by the county executive, or his or her designee, and shall be subject to the following requirements: (a) The sale price shall equal or exceed the fair market value of the certified development rights, as determined based on prevailing market conditions. (b) Sales shall occur through a competitive process, which shall be subject to the following requirements: (i) A request for proposal to purchase certified development rights from the county shall be published in a newspaper of general circulation at least fourteen days before the last day upon which proposals shall be received. The request for proposal shall identify the number of certified development rights to be sold and the evaluation factors, including a minimum sale price, which shall be established by the county executive to evaluate proposals. (ii) The request for proposal shall require that all proposals be in writing and state the number of certified development rights to be purchased. (iii) All sales shall be made to the highest qualified bidder, provided that no offers below fair market value shall be accepted. The municipality may reject any and all proposals for good cause and request new proposals. (c) Payment for purchase of certified development rights from the county

shall be made in full at the time the certified development rights are sold, unless, at the discretion of the administrator of the property management division, payment is secured by an irrevocable letter of credit or other security. (d) The proceeds from sales of certified development rights shall be deposited into a TDR fund, established by ordinance.

(5) Exempt purchases. Compliance with the proposal requirements in subsection 2 of this section shall not be required for the purchase of TDR certificates issued for properties within the TDR sending areas listed in Attachment A to the Cooperative Agreement between the United States of America Commodity Credit Corporation and Snohomish County for the Farm and Ranch Lands Protection Program, dated September 24, 2003.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005; Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006)

30.35A. 140 Transfer of development rights (TDR) TDR advisory committee.

(1) Establishment, composition and terms of TDR advisory committee. The TDR advisory committee is hereby established pursuant to SCC 2.03.090. The committee shall be subject to the following requirements: (a) The committee shall consist of five members selected as follows: (i) Position 1: a resident of the Stillaguamish River valley who is engaged in some aspect of commercial agriculture. (ii) Position 2: a member of the Snohomish County Agricultural Advisory Board who is also engaged in some aspect of commercial agriculture. (iii) Position 3: a representative from the Snohomish Conservation District who is also engaged in some aspect of commercial agriculture. (iv) Position 4: a representative from the Snohomish County Farm Bureau who is also engaged in some aspect of commercial agriculture. (v) Position 5: one of the following as determined by the county executive: the director of the parks department, or his or her designee, the director of the department of parks, or his or her designee, or the director of the department of planning and development services, or his or her designee. (b) Positions 1-4 shall be appointed by the county council consistent with the requirements of chapter 2.03 SCC, with terms as follows: members of odd-numbered positions shall serve an initial term of three years and terms of two years thereafter, and members of the even-numbered positions shall serve an initial term of two-years and terms of two years thereafter. Members of positions 1-4 shall serve no more than two consecutive terms. Position 5 shall not be subject to term limits. (2) Purpose. The purpose of the TDR advisory committee is to review, pursuant to SCC 30.35A.130(2), proposals for the county to purchase certified development rights from sending sites located within the TDR pilot program sending area and to provide recommendations to the department concerning which proposals should be accepted in order of priority based on the review criteria set forth in subsection 3(b) of this section. (3) Duties. The duties of the TDR advisory committee are as follows: (a) The committee shall meet at least once every six months, or more frequently if necessary, to review proposals to purchase certified development rights received by the county pursuant to SCC 30.35A.130(2); provided, however, that such meetings shall not be required if no requests to purchase certified development rights have been received. The committee may, at its discretion, invite individuals or groups who submitted proposals pursuant to SCC 30.35A.130(2) to attend committee meetings in order to make a presentation or answer questions about a proposal. (b) Following one or more meetings held pursuant to subsection 3(a) of this section, the committee shall provide the department with its recommendations, by priority, for the purchase of certified development rights received by the county pursuant to SCC 30.35A.130(2). The committee shall base its recommendations on consideration of the following factors: (i) location of the sending site within the TDR pilot program sending area, as required by

SCC 30.35A.130(2); (ii) the extent to which the sending site has been used for commercial production of agriculture within

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the preceding five years and the extent to which the sending site owner(s) relied upon income from farming the sending site for their livelihood; (iii) the likelihood that development on or near the sending site will occur in the near future, as evidenced by overall market trends in the area of the sending site; (iv) the number of residential dwelling units or other structures, if any, intended to be built on the sending site, as documented in the application for TDR certificates provided to the department pursuant to SCC 30.35A.050(2); (v) the extent to which conservation of the sending site will further the creation of a contiguous pattern of agricultural land conservation. (vi) the extent to which restricting development on the sending site would further the agricultural conservation goals and objectives of the Snohomish County General Policy Plan; and (vii) the likelihood that the sending site will be used for some aspect of commercial agricultural in the future. (c) The committee may develop more specific evaluation criteria in order to complete its recommendation under SCC 30.35A.140(3)(b) as long as the criteria are consistent with the factors contained in SCC 30.35A.140(3)(b)(i)-(vii). (d) The committee shall select a chairperson. (4) Staff support. The department shall provide staff support to the TDR advisory committee. Staff duties include, but are not limited to, assisting the committee in reserving meeting rooms, reviewing proposals and drafting written recommendations reflecting the committee's review of proposals under subsection 3(b) of this section.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005)

30.35A.150 Transfer of development rights (TDR) sales exempt from surplus provisions.

The sale of certified development rights by the Snohomish County may be completed consistent with its needs and in accordance with the requirements of this chapter. Such sales are exempt from the real and personal property provisions of chapter 4.46 SCC relating to surplus property.

(Added Amended Ord. 04-123, Dec. 15, 2004, Eff date March 15, 2005)

Chapter 30.35B

DESIGNATION OF TRANSFER OF DEVELOPMENT RIGHTS SENDING AREAS BY COUNCIL MOTION

30.35B.010 Designation of Transfer of Development Rights (TDR) Sending Areas by Council Motion-purpose and applicability.

(1) Purpose. The purpose of this chapter is to create a process that allows the county by council motion to identify certain open space, natural and resource areas in unincorporated Snohomish County as TDR sending areas. The county may take timely action to conserve watershed, habitat, open space and resource areas for the use and enjoyment of future generations by allowing the transfer of development rights from lands with

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significant conservation values to lands considered more appropriate for development. Subject to the requirements of this chapter, the transfer of development rights from sites located within TDR sending areas to sites located within TDR receiving areas is allowed in order to:

- (a) permanently preserve watershed, habitat, open space, and natural resource and lands with countywide public benefit;
- (b) provide flexibility and better use of land and building techniques;
- (c) help preserve watershed, habitat, open space and natural resource lands of significance;

(d) implement the County-wide Planning Policies, and GPP TDR goals, objectives, and policies, and the provisions of this chapter.

(2) Applicability. The requirements of this chapter do not apply to the processing or issuance of building permits or other development approvals. This chapter supplements county land use regulations and resource land protection efforts by establishing requirements for:

(a) determining the number of certified development rights that a sending site is eligible to transfer based on the overall developable area of the site which is intended to provide an incentive for use of the TDR program;

(b) issuing TDR certificates reflecting the number certified development rights that a sending site is eligible to transfer;

(c) conveying TDR certificates and recording conservation easements that restrict development on sending sites;

(d) qualifying TDR sending sites in accordance with the comprehensive plan.

(Added by Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.020 Designation of Transfer of Development Rights (TDR) sending areas by council motion overview.

(1) Designation of sending areas. Upon a completed application the County Council, may by motion designate a site as a TDR sending area, if they find the area to be designated is has significant conservation, watershed, habitat, open space or natural resource values.

(2) Issuance and conveyance of TDR certificates. Subject to the requirements of this chapter, sending site owners may obtain from the department serially numbered TDR certificates reflecting the number of certified development rights that may be transferred from the sending site owner to a purchaser, and which may thereafter be freely transferred from purchaser to purchaser until ultimately applied to a receiving site located within a receiving area. The number of certified development rights credited to a sending site is determined based on the overall developable area of the sending site. TDR certificates may be applied to receiving sites pursuant to the requirements of this chapter or applicable city regulations.

(3) Grant of TDR conservation easement. TDR certificates from a site designated a sending area pursuant to requirements of chapter 30.35B SCC may be issued in exchange for a conservation easement granted to the county pursuant to the requirements of this chapter. The TDR conservation easement is used to conserve,

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watershed, habitat, open space and natural resource use, on the sending site for which TDR certificates are certified.

(4) Application of certified development rights to receiving areas. Subject to the requirements of this chapter or applicable city regulations, certified development rights, as reflected by properly issued TDR certificates, may be used to obtain development incentives within designated TDR receiving areas.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.030 Transfer of development rights (TDR) - designation of sending area sites by council motion.

(1) The County Council may by motion designate certain sites as sending areas when it is in the public interest to transfer development rights to preserve land with significant watershed, habitat, open space, and natural resource values.

(2) To be designated a sending area under chapter 30.35B SCC, the site must meet the following minimum requirements:

(a) Sending site must follow established lot lines. The boundaries of a sending site must follow established lot lines and cannot include less than the entire portion of a lot, as defined in Title 30 SCC.

(b) Private ownership required. The sending site must be owned by a private individual or entity, and may not be owned by municipal corporations, special purpose districts, or government bodies.

(c) Code compliance required. If the sending site is the subject of code enforcement action by the county, the person responsible upon whom a notice for a violation has been served pursuant to chapter 30.85 SCC must resolve these violations, including any required abatement, restoration, or payment of civil penalties, before development rights for the sending site may be certified or transferred by a sending site landowner. This requirement may be waived at the discretion of the director where a proposal is in the public interest, provided that any outstanding code violations do not materially affect the conservation value of the sending site and the person responsible for code compliance is making a good faith effort to resolve the violations. Waivers granted pursuant to this subsection are solely for the purpose of TDR sending site eligibility and do not constitute a waiver of any county land use regulations or affect ongoing or future code enforcement actions related to the sending site.

(d) Forest practices compliance required. For lots on which the entire lot or a portion of the lot has been cleared or graded pursuant to a Class II, III or IV special forest practices permit as defined by RCW 76.09.050 within the six years prior to application for certification or transfer of development rights, the applicant must provide an affidavit of compliance with the reforestation requirements of RCW 76.09.070, WAC 222-34-010 and any additional reforestation conditions of their forest practice permit. Lots that are subject to a six-year moratorium on development applications pursuant to RCW 76.09.060 shall not be qualified as TDR sending sites until such moratoria have expired or been lifted.

(Added by Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.040 Transfer of development rights (TDR) - sending site calculations.

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(1) Calculation for transfer purposes only. The determination of the number of certified development rights that a sending site is eligible to transfer pursuant to this section, including the determination of TDR net area pursuant to this section, shall be valid for transfer purposes only and shall not entitle the sending site landowner to building permits or other development approvals.

(2) Number of certified development rights. The number of certified development rights that a sending site is eligible to transfer shall be determined by calculating the number of residences that could be allowed on the sending site area under the zoning and development code regulations that apply to the sending site.

(3) TDR net area. For purposes of determining the number of certified development rights that a sending site can transfer pursuant to subsection (2) of this section, the sending site net area shall equal the area of the sending site area minus the following:

(a) The number of existing and proposed residential dwelling units or other residential, commercial, or industrial structures, if any, on the sending site multiplied by the minimum lot area, as determined pursuant to the bulk matrix at SCC 30.23.030(1), for the applicable zone in which the sending site is located.

(b) Any portion of the sending site that is already subject to a conservation easement or other recorded encumbrance restricting development on the sending site.

(4) The applicant for the TDR credits shall submit on a form provided by the county, a calculation for the number of credits that may be certified, subject to review and approval by the director.

(5) TDR calculation final. Except as otherwise provided by SCC 30.35B.050(3)(e), the determination of the number of certified development rights that a sending site is eligible to transfer to a receiving site pursuant to subsection 1 of this section shall not be revised due to subsequent rezones or other changes to the sending site.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.050 Transfer of development rights (TDR) - certification of development rights and issuance of TDR certificates.

(1) TDR certification process. Subject to the requirements of this section, sending site landowners may obtain TDR certificates which can be transferred pursuant to SCC 30.35B.070. The required process for obtaining TDR certificates includes the application process in subsection (2) of this section and the certification process in subsection (3) of this section:

(2) Application for TDR certificates. In order to obtain TDR certificates pursuant to subsection 1 of this section, the sending site owner(s) must submit an application for TDR certificates. The applicant for the TDR credits will submit on a form provided by the county, a calculation for the number of credits that may be certified and will be subject to review and approval by the director. The department shall use the application to determine whether the sending site meets the requirements of SCC 30.35B.030 and, if so, the number of certified development rights that the sending site is eligible to transfer pursuant to SCC 30.35B.040. The application shall include all of the following:

(a) Legal description and parcel numbers of the sending site for which TDR certificates are sought.

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(b) The following documents, which shall be used as the basis for determining net area pursuant to SCC 30.35A.050(2):

(i) If the sending site consists of one or more undivided tax parcels, the applicant(s) shall provide either official records from the Snohomish County Assessor or a survey that has been prepared and stamped by a surveyor licensed in the state of Washington.

(ii) If the sending site consists of lots within one or more tax parcels, the applicant(s) shall provide a survey that has been prepared and stamped by a surveyor licensed in the state of Washington.

(iii) If one or more single family dwellings or other residential, commercial, or industrial structures exist on the sending site, the applicant(s) shall submit a site map showing the location of each dwelling.

(iv) If the applicant(s) propose to build one or more single family dwellings, or other structures permitted by the sending site zoning, following the issuance of TDR certificates for the sending site, the applicant(s) shall submit a general site plan showing the number of dwellings and their location, as well as any proposed subdivision.

(c) A title report issued no longer than 30 days prior to the date of application confirming that the ownership interest(s) in the sending site are in the name(s) of the person(s) whose signature(s) appear on the application for TDR certificates and that there are no existing conservation easements on the sending site.

(d) A declaration by the applicant(s) describing the status of ongoing code enforcement actions, if any, relating to the sending site and the steps taken by the applicant to resolve the violations.

(e) A declaration by the applicant(s) stating all liens, if any, that are recorded against the sending site.

(f) A review fee pursuant to SCC 30.86.135.

(g) When the information required by subsection 2 of this section is inadequate or unavailable, the department may require additional documentation from the applicant or rely on information contained in the county geographic information system or other county records.

(3) Certification of TDR certificates

(a) Following application for TDR certificates by the sending site, staff shall verify the credit calculations prior to submitting the request to the county council for action.

(b) The department may issue a TDR certificate letter of intent. The letter shall contain a determination of the number of development rights calculated for the sending site pursuant to SCC 30.35B.040 and an agreement by the department to issue a corresponding number of TDR certificates in exchange for a sending site conservation easement granted to the county by the sending site owner pursuant to SCC 30.35B.060. The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall

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have no value and cannot be transferred or used to obtain increased development rights within receiving areas.

(c) The county council may designate the site as a sending area by motion, if they find the area to be designated has significant conservation values.

(d) A conservation easement for the sending site shall be approved and accepted by the County prior to issuing any TDR certificates.

(e) As provided by the TDR certificate letter of intent, the department shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a conservation easement pursuant to the requirements of this section and SCC 30.35B.060; provided, however, that the department shall have 14 days from the date the conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site permit file and/or a site inspection. If, based on such a review, the department determines that conditions on the sending site are materially different than those documented in the information provided to the department pursuant to subsection 2 of this section, the department shall reject the conservation easement and the TDR certificate letter of intent shall be null and void. Where a TDR certificate has been determined to be null and void pursuant to this subsection, a sending site owner may reapply for TDR certificates and such reapplications shall be subject to the requirements of this section.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.060 Transfer of development rights (TDR) - conservation easement.

(1) TDR conservation easement required. No TDR certificates shall be issued pursuant to SCC 30.35B.050 unless a conservation easement is accepted by the director pursuant to the requirements of this section.

(2) Acceptance and recording of TDR conservation easement. Subject to the restrictions of SCC 30.35A.050(3)(e), the director shall accept and sign on behalf of the county a conservation easement offered by a sending site owner in exchange for TDR certificates following issuance of a TDR certificate letter of intent; provided, however, that the easement meets the requirements set forth in subsection 3 of this section. Following acceptance of a conservation easement by the director, the department shall record the easement with the county auditor.

(3) Requirements for TDR conservation easement. The conservation easement shall be on a form approved by the prosecuting attorney and shall be reviewed and approved by the department, subject to the requirements of this section. The easement shall contain, at a minimum, all of the following:

(a) A legal description of the sending site.

(b) The serial numbers of the TDR certificates to be issued by the department on the sending site that is the subject of the conservation easement.

(c) A covenant prohibiting any subdivision of the sending site except for subdivisions, if any, that were proposed in the documentation submitted to the department pursuant to SCC 30.35A.050(2)(b)(iv).

(d) A covenant prohibiting all uses that impair or diminish the functions or use of watershed, habitat, open space or resource areas being conserved and the construction of any new residential structures.

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(e) A covenant that all provisions of the conservation easement shall run with the land and bind the sending site in perpetuity, and may be enforced by the county.

(f) A statement that nothing in the restrictions shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his or her heirs, successors and assigns shall retain exclusive rights to such access or use subject to the terms of the conservation easement.

(g) Additional provisions that are reasonably necessary for the enforcement and administration of the conservation easement as determined by the director, including a covenant granting the county a right of entry, subject to reasonable advance notice, to conduct brief inspections for the sole purpose of determining compliance with the requirements of the easement.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.070 Transfer of development rights (TDR)- conveyance of certified development rights.

(1) Conveyance of certified development rights authorized. Subject to the requirements of this section, TDR certificates issued pursuant to SCC 30.35B.050 may be sold or otherwise conveyed and held indefinitely before certified development rights are applied to a receiving site pursuant to SCC 30.35B.080 through SCC 30.35B.120.

(2) Deed of transferable development rights required. TDR certificates issued pursuant to SCC 30.35B.050 shall be sold or otherwise conveyed only by means of a deed of transferable development rights meeting the requirements of this section.

(3) Recording of deed and notice of transfer. At the time a TDR certificate is conveyed, the parties shall record the deed of transferable development rights documenting the conveyance. The department shall review and approve the deed of transferable development rights, subject to the requirements of this section, prior to its recording. Costs associated with the recordation shall be paid by the seller.

(4) Contents of deed. The deed of transferable development rights required by subsection 3 of this section shall specify the number of certified development rights sold or otherwise conveyed and shall be on a form provided by the department and approved the prosecuting attorney. The deed of transferable development rights must include:

(a) A legal description and map of the sending site.

(b) The names of the transferor and the transferee.

(c) A covenant that the transferor grants and assigns to the transferee a specified number of certified development rights from the sending site.

(d) Proof of ownership of the sending site by the transferor or, if the transferor is not the owner of the sending site, a declaration that the transferor has either:

(i) sold the sending site but retained the TDR certificates issued for the sending site pursuant to SCC 30.35B.050; or

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(ii) obtained TDR certificates previously conveyed by an original deed of transferable development rights, which shall be identified by date of execution, the names of the original transferor and transferee, and the volume and page where it was recorded with the auditor.

(e) A covenant by which the transferor acknowledges no further use or right of use with respect to the certified development rights being conveyed.

(f) Certification of the number of certified development rights on the sending site and copies of the TDR certificates issued by the department for the sending site pursuant to SCC 30.35B.050.

(g) Proof of payment to the state of any required excise taxes and payment to the county of recording fees for the transaction.

(h) Proof of the execution and recordation of a conservation easement on the sending site, as required by SCC 30.35B.060.

(i) The signature of the department staff member(s) who have reviewed the deed for completeness.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

30.35B.080 Reserved.

30.35B.090 Reserved.

30.35B.100 Reserved.

30.35B.110 Reserved.

30.35B.115 Transfer of development rights (TDR) - application of TDR certificates to receiving sites and extinguishment of TDR certificates.

(1) Application to a TDR receiving site. TDR certificates shall be considered applied to a receiving site when a final decision has been made approving the receiving site development activity for which the TDR certificates are provided.

(2) Effect of applying TDR certificates to a receiving site. TDR certificates that have been applied to a receiving site pursuant to subsection 1 of this section shall be considered void by the county and may not be applied to receiving sites pursuant to this chapter; provided, however, that if a decision approving a receiving site development activity is appealed, the TDR certificates provided in connection with that approval shall not be considered void under this section unless the decision approving the development activity is affirmed following the exhaustion of all administrative and judicial appeals.

(3) TDR extinguishment document required. Upon application to a receiving site pursuant to subsection 1 of this section, the applicant receiving approval of a receiving site development activity shall provide a TDR extinguishment document to the department. The TDR extinguishment document shall be on a form provided by the department and shall include the serial number of each TDR certificate that has been applied to a receiving site and the legal description of the receiving site to which the certificate(s) have been applied.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)

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30.35B.120 Reserved.

30.35B.125 Transfer of development rights (TDR)- interlocal agreements for incorporated TDR receiving areas.

(1) Authorization. Subject to final approval by the county council, the county executive is authorized to negotiate and execute interlocal agreements with cities providing for the use of TDR certificates issued pursuant to this chapter in connection with development approvals within incorporated TDR receiving areas designated or zoned by a city. Execution of such agreements by the county shall be subject to the applicable requirements of this chapter and the comprehensive plan.

(2) Substantive requirements. Interlocal agreements executed by the county pursuant to subsection 1 of this section shall provide for the use of TDR certificates issued by the county pursuant to SCC 30.35B.050 in connection with development applications within TDR receiving areas following annexation. Such agreements shall also contain additional provisions necessary to implement the comprehensive plan, including a process by which the city shall provide TDR certificates and an associated TDR extinguishment document to the county following transfer of the TDR certificates to an incorporated receiving site consistent with the requirements of SCC 30.35B.115.

(Added Ord. 09-059, June 3, 2009, Eff date June 18, 2009)